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12 UNITED STATES DISTRICT COURT
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14 NORTHERN DISTRICT OF CALIFORNIA

15 MICHAEL MOATES,
Plaintiff,
16 v.
17 META PLATFORMS, INC. et al.,
Defendants.

Case No. 3:22-cv-04478-JD

**DEFENDANTS' REPLY ISO MOTION
TO DISMISS PLAINTIFF'S
COMPLAINT**

Hearing Date: March 9, 2023
Time: 10:00 am
Dept: 19
Judge: Hon. James Donato

1 **I. INTRODUCTION**

2 Plaintiff Michael Moates has failed to file an opposition to Defendants' Motion to Dismiss
 3 Plaintiff's Amended Complaint and the time to file an opposition has since passed. As Plaintiff
 4 has failed to oppose or respond to Defendants' Motion to Dismiss, Defendants respectfully
 5 request that the Court grant Defendants' Motion and dismiss Plaintiff's Amended Complaint with
 6 prejudice. And, as established in Defendants' Motion (*see generally* Dkt. 49), Plaintiff's
 7 Amended Complaint fails in its entirety to assert a cause of action for which relief can be granted.

8 **II. PROCEDURAL BACKGROUND**

9 This action was transferred from the Eastern District of Texas on August 2, 2022. Dkt.
 10 No. 30. At the case management conference on December 1, 2022, where Plaintiff failed to
 11 appear, the Court granted Plaintiff's motion for leave to file an amended complaint. Dkt. No. 44.
 12 Plaintiff had previously filed *five* versions of his complaint in both Texas state and federal courts.
 13 *See Michael Moates v. Facebook Inc.*, Case No. 4:20-cv-00896; *Moates v. Facebook, Inc., et al.*,
 14 Case No. 21-6407-431; *Moates v. Facebook, Inc., et al.*, Case No. 4:21-cv-00694-ALM-KPJ. On
 15 December 12, 2022, the Court granted the parties' stipulation to extend Plaintiff's time to file his
 16 amended complaint, making his deadline January 9, 2023. On January 23, 2023, Defendants filed
 17 their Motion to Dismiss Plaintiff's Amended Complaint. Dkt. 49. Pursuant to Local Rule 7-3,
 18 Plaintiff's opposition was due fourteen (14) days later, on February 6, 2023. Plaintiff has not
 19 filed an opposition to Defendants' Motion to Dismiss Plaintiff's Amended Complaint.

20 **III. ARGUMENT**

21 The time to respond to Defendants' Motion to Dismiss Plaintiff's Amended Complaint
 22 has passed, and Plaintiff has not filed any opposition. For this reason alone, Plaintiff's Amended
 23 Complaint should be dismissed in its entirety. *V.V.V. & Sons Edible Oils Limited v. Meenakshi*
 24 *Overseas, LLC*, 946 F.3d 542, 547 (9th Cir. 2019) ("claims can be abandoned if their dismissal is
 25 unopposed"); *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 888 (9th Cir. 2010) ("A
 26 plaintiff who makes a claim ... in his complaint, but fails to raise the issue in response to a
 27 defendant's motion to dismiss ..., has effectively abandoned his claim, and cannot raise it on

1 appeal.”); *see, e.g.*, *Enders v. Countrywide Home Loans, Inc.*, 2009 WL 4018512, at *3 (N.D.
2 Cal. Nov. 16, 2009) (granting defendant’s motion to dismiss where plaintiff failed to oppose);
3 *King v. Contra Cost County*, 2020 WL 978632, at *2 (N.D. Cal. Feb. 28, 2020) (finding
4 plaintiff’s failure to oppose, standing alone, justifies dismissing the complaint).

5 Plaintiff has now had *numerous* chances in *multiple* courts to assert any viable claim for
6 relief, and he has failed to do so. As such, and for all the reasons already asserted in Defendants’
7 Motion to Dismiss, Defendants respectfully request that this Court grant Defendants’ Motion to
8 Dismiss Plaintiff’s Amended Complaint and dismiss all of Plaintiff’s claims with prejudice.

9 **IV. CONCLUSION**

10 For the foregoing reasons, Defendants respectfully requests that this Court dismiss the
11 Amended Complaint in its entirety, with prejudice.

12
13 Dated: February 13, 2023

JACOB M. HEATH
ORRICK, HERRINGTON & SUTCLIFFE LLP

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16 By: /s/ Jacob M. Heath
17 JACOB M. HEATH
18 Attorney for Defendant
Meta Platforms, Inc.

PROOF OF SERVICE

I am employed in the County of San Mateo, State of California. I am over the age of 18 years old and not a party to this action. My business address is Orrick, Herrington & Sutcliffe LLP, 1000 Marsh Road, Menlo Park, California 94025. On February 13, 2023, I served the following document(s) entitled:

1. DEFENDANTS' REPLY ISO MOTION TO DISMISS PLAINTIFF'S COMPLAINT

on all interested parties to this action in the manner described as follows:

Michael Moates
6004 Oakland Bend, #116
Denton, TX 76112
mike@cpmht.com
(pro se Plaintiff)

- (VIA EMAIL)** On February 13, 2023, via electronic mail in Adobe PDF format the document(s) listed above to the electronic address(es) set forth below.
 - (VIA U.S. MAIL)** On February 13, 2023 by placing a true copy of the document(s) listed above in an envelope, with postage thereon fully prepaid, addressed as set forth below and then sealing the envelope and depositing it in the U.S. mail at Menlo Park, CA.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

Executed on February 13, 2023, at Fremont, California.

/s/ Sema Virrueta
Sema Virrueta